

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Number One Health (Middle East)
LLC, d/b/a International Medical
& Rescue,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

William Edwyn Gregory Sudell,

Defendant.

Civ. No. 09-3140 (MJD/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge upon the routine supervision of cases filed in this Division, and upon a general assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

This action, which the Plaintiff attempted to commence in the Minnesota District Court for Hennepin County, was removed to this Court by the Defendant on November 6, 2009. See, Notice of Removal, Docket No. 1. In the Notice of Removal filed with this Court, the Defendant disclosed that, on or around October 7, 2009, the Plaintiff attempted to serve him with a copy of the Summons and Complaint, by

delivering a copies to his parents' residence in South Africa. Id. at ¶2. His parents, in turn, faxed a copy of the Summons and Complaint to the Defendant in the United Arab Emirates, where he resides. Id. Accordingly, in his Notice of Removal, the Defendant maintained that he had not yet been properly served, and that he had no obligation to Answer the Complaint.

Thereafter, on March 25, 2010, it having appeared that one hundred and twenty (120) days had passed, and that the Defendant had not been served with the Complaint and Summons, as required by Rule 4(m), Federal Rules of Civil Procedure, this Court issued an Order, which stated as follows:

That the Plaintiff is directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In the absence of good cause shown, the Court shall recommend that this action be dismissed for failure to effect proper service, and for failure of prosecution.

Docket No. 5, at p. 3 of 3.

To date, the Plaintiff has failed to abide by the terms of our Order of March 25, 2010. Since we have previously forewarned the Plaintiff of the potential consequences for the failure to timely serve the Defendant, and to abide by the Orders of this Court, we recommend that this action be dismissed, for failure to comply with this Court's Order of March 25, 2010, for failure to effect proper service, and for lack of prosecution.

NOW, THEREFORE, It is --

RECOMMENDED:

That this action be dismissed, but without prejudice, for failure to comply with this Court's Order of March 25, 2010, for failure to effect proper service, and for lack of prosecution.

BY THE COURT:

Dated: May 27, 2010

s/ Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than June 10, 2010**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than June 10, 2010**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.